

03.11.2022
Item No.11
Ct. No.7
CHC
(disposed of)

C.O.2039 of 2022

Debibrata Chattopadhyay
Vs.
Jharna Ghosh

Mr. Aniruddha Chatterjee,
Mr. Saptarshi Mal,
Mr. Subhradip Roy
...for the petitioner

The subject-matter of challenge in this revisional application is against the order dated 8th April, 2022, permitting the opposite party/defendant to set out her defence in the cross-examination of the plaintiff's, thereby enabling the defendant/opposite party to show the documents, being relied upon by the defendant, to witnesses, examined by plaintiff during cross-examination.

Mr. Aniruddha Chatterjee, learned advocate appearing for the petitioner submits that court below has misread the direction of the Apex Court passed in Contempt Petition (C) No.320 of 2022 in Civil Appeal No.8264 of 2016, dated 26th August, 2022.

It would be most relevant and profitable also to reproduce the operative portion of the order pertaining to the subject under reference, which may be set out as hereinbelow:-

“When an order has been passed by this Court, it has to be given effect in letter and spirit. An order passed by this Court cannot be permitted to be treated as a paper order. The spirit behind the order dated 23.08.2016 passed by this Court is clear that in the event the respondent fails to clear the arrears, he will not be permitted to defend her case and the trial will proceed without her defence.

We are clearly of the view that the learned trial Judge has permitted indirectly to do what has been prohibited directly by this Court vide order dated 23.08.2016.

We, therefore, modify the orders passed by the learned Civil Judge (Senior Division) dated 14.01.2022 and 08.04.2022 and clarify that the respondent-defendant would be permitted only to cross-examine the plaintiff with regard to the documents produced by the plaintiff.”

The above direction is most expressive so as to implement the same without any doubt. In view of the order of the Apex Court, the opposite party/defendant is only permitted to cross-examine the plaintiff with regard to the documents produced by the plaintiff.

Mr. Chatterjee, learned advocate further adverting to order dated 26.09.2022, passed by learned Civil Judge (Senior Division), 2nd Court, Alipore, South 24

Parganas, in the same case, submits that by the said order, the court below had already expunged documents, which could not be produced by the plaintiff in evidence, but produced by the defendant at the time of cross-examination of the P.W.1 and verbal evidence also relating to those exhibited documents from the cross-examination of the P.W.1.

It is thus submitted by Mr. Chatterjee that there is hardly any scope for any elaboration on the issue, and the court below is to imply implement the direction of the Apex Court, as mentioned hereinabove.

It is further submitted by Mr. Chatterjee that there has been a direction already recorded by the Apex Court in Civil Appeal No.8264 of 2016 dated 23rd August, 2016 that the trial court shall decide the suit within a period of one year from the date of receipt of the copy of this order, and as such, such direction may be directed to be strictly complied with.

In view of the above, the revisional application is thus disposed of directing the court below to strictly adhere to the direction passed by the Apex Court in Contempt Petition (C) No.320 of 2022 in Civil Appeal No.8264 of 2016, the operative portion of this order is quoted hereinabove, and ensure logical conclusion of the suit with utmost expedition without granting unnecessary adjournment, unless it is extremely unavoidable.

Petitioner is directed to make communication of this order to the learned court below as well as to the opposite party and her learned advocate in the court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)